

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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2014 MAR 24 P 2:08

DATE: MARCH 24, 2014
DOCKET NO.: WS-02987A-13-0053

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

SWING FIRST GOLF, LLC VS. JOHNSON UTILITIES, LLC
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 2, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

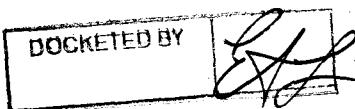
APRIL 8, 2014 AND APRIL 9, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

MAR 24 2014



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE FORMAL
9 COMPLAINT OF SWING FIRST GOLF, LLC
10 AGAINST JOHNSON UTILITIES, LLC.

DOCKET NO. WS-02987A-13-0053

DECISION NO. _____

9 **ORDER**

10 Open Meeting
11 April 8 and 9, 2014
12 Phoenix, Arizona

13 **BY THE COMMISSION:**

14 This Order comes before the Arizona Corporation Commission ("Commission") as a Motion
15 to Dismiss the above-captioned Complaint with prejudice upon agreement of the parties. We
16 conclude that it is in the public interest to dismiss the Complaint with prejudice.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On March 11, 2013, Swing First Golf, LLC ("SFG") filed with the Commission a
22 Formal Complaint against Johnson Utilities, LLC ("Johnson" or "Utility") requesting that the
23 Commission order Johnson to deliver effluent in quantities sufficient to satisfy SFG's irrigation needs
24 for its Johnson Ranch Golf Course; change a minimum bill for SFG's effluent deliveries based on a
25 3-inch water meter; and sanction Johnson for failing to send monthly bills to SFG as required by
26 A.A.C. R14-2-409(A)(1).

27 2. On April 2, 2013, Johnson filed a Motion to Dismiss ("MTD") and Motion to Strike
28 ("MTS").

1 3. On April 12, 2013, SFG filed its response to Johnson's MTD and MTS.

2 4. On April 26, 2013, Johnson filed its reply in support of its MTD and MTS, and
3 requested alternatively that SFG be required to file a more definite statement with respect to count
4 "D".

5 5. On May 8, 2013, SFG filed a Supplement to its Complaint.

6 6. On May 13, 2013, SFG filed a Second Supplement to its Complaint.

7 7. On May 14, 2013, Johnson filed its response to SFG's Supplement to Complaint and
8 Johnson filed a Motion to Strike.

9 8. On May 15, 2013, SFG filed a Motion for Order to Show Cause ("OSC") and Motion
10 for Emergency Order.

11 9. On May 16, 2013, by Procedural Order, a procedural conference was scheduled for
12 May 20, 2013, to discuss the various pending motions and to determine a procedural schedule for the
13 complaint proceeding.

14 10. On May 17, 2013, SFG filed a Third Supplement to its Complaint.

15 11. On May 20, 2013, a procedural conference was held as scheduled. SFG, Johnson and
16 the Commission's Utilities Division ("Staff") appeared through counsel. Arguments were heard
17 regarding the pending motions and a procedural schedule was discussed.

18 12. On May 22, 2013, SFG filed an Update to its Complaint.

19 13. On May 31, 2013, Johnson filed a Motion to Require SFG to Comply with Rules
20 15(A) and 15(D) of the Arizona Rules of Civil Procedure ("A.R.C.P."); Response and Motion to
21 Strike Supplements and Update to Formal Complaint; and Notice Regarding Discovery.

22 14. On August 16, 2013, the Commission issued Decision No. 74036, granting in part
23 Johnson's MTD, and denying the MTD as to two of SFG's claims.

24 15. On September 27, 2013, Johnson filed a Motion for Summary Judgment.

25 16. On October 15, 2013, SFG filed a Notice of Stipulated Response Date, requesting
26 additional time until November 4, 2013, to file its response to the Motion for Summary Judgment.

27 17. On November 15, 2013, SFG filed a Notice of Settlement and Motion to Dismiss
28 Complaint with Prejudice. The Notice states that the parties have agreed to a settlement of this matter

1 and request that the Complaint be dismissed with prejudice and that the docket be administratively
2 closed.

3 18. On November 19, 2013, Johnson filed a Response in Support of Motion to Dismiss
4 Complaint with Prejudice, stating that the parties have settled all outstanding issues in this docket,
5 subject to the terms and conditions of a signed settlement and mutual release agreement between the
6 parties. Johnson's response states it supports SFG's Motion to Dismiss the Complaint with prejudice.

7 19. The parties to this matter have reached a mutual agreement to dismiss the Complaint
8 with prejudice. It is in the public interest to have the parties mutually resolve the issues raised in this
9 Complaint. Therefore, it is appropriate to grant SFG's Motion to Dismiss in the above-captioned
10 Complaint with prejudice.

11 CONCLUSIONS OF LAW

12 1. Johnson is a public service corporation pursuant to Article XV of the Arizona
13 Constitution and A.R.S. § 40-246.

14 2. The Commission has jurisdiction over Johnson and the subject matter of the
15 Complaint filed in this docket.

16 3. It is in the public interest to grant Swing First's Motion to Dismiss the Complaint with
17 prejudice.

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ORDER

IT IS THEREFORE ORDERED that Swing First Golf's Motion to Dismiss its Complaint with prejudice is hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YK:ru

1 SERVICE LIST FOR: SWING FIRST GOLF, LLC AGAINST JOHNSON UTILITIES,
2 LLC
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